U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 10 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research assistant at the [redacted] where the petitioner was a doctoral candidate as of the petition's filing date. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master of Science in Engineering degree from [redacted] (The petitioner has since received a Ph.D. from the same institution, but he did not hold this degree when he filed the petition in January 1998.) The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree.

The petitioner claims exceptional ability, but this claim is moot because the petitioner qualifies as a member of the professions holding an advanced degree. A further finding of exceptional ability would be of no benefit to the petitioner in this

proceeding. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's specialty within the field of environmental engineering concerns the treatment of drinking water. The

petitioner has submitted copies of several media articles regarding the hazards of water contamination. This information establishes the substantial intrinsic merit of the petitioner's field of endeavor.

The petitioner has co-authored a number of published papers, and is named as a co-inventor on a U.S. patent. National publication of one's work can afford national scope and potential national impact, thereby satisfying the second prong of the national interest test.

The remaining prong of the test requires the petitioner to show that he, individually, will benefit the national interest to such an extent that an exemption from the labor certification requirement is in order. General arguments about the importance of his field of research apply equally to the petitioner and to fully qualified U.S. workers, and therefore cannot suffice to establish eligibility for a national interest waiver.

Several witness letters accompany the petition. [redacted] Professo[redacted] [redacted] states:

> [The petitioner] quickly became a significant contributor to our endeavor, in terms of both data collection and interpretation.
>
> At the time, we were conducting research on the preparation of novel materials for removing organic contaminants from drinking water. The materials we had developed [prior to the petitioner's arrival] to remove metals from water were not successful at removing the organic compounds, and new methods had to be developed. . . . [The petitioner] eventually identified . . . a composite material with the desired properties. He then completed a very extensive set of experiments to characterize the physical and chemical properties of the media. The quantity of work performed was far greater than is typical for a Master's degree, and the quality was first rate. . . .
>
> For his doctoral work, [the petitioner] chose to explore the reactions between organic compounds and the chlorine-based compound most commonly used for disinfection of drinking water (hypochlorous acid). This disinfectant has [resulted in] . . . the virtual elimination of epidemics caused by water-borne pathogens. However, . . . the same compound undergoes side reactions with organic compounds in the water to generate trace amounts of toxic chemicals such as chloroform. . . .
>
> The largest obstacle to understanding the reactions forming the toxic disinfection by-products (DBPs) has been the enormous cost in both time and dollars needed to analyze samples to determine the DBP concentrations. Commercial labs commonly

charge $50 to $150 *for a single analysis*. . . . [The petitioner] developed a new technique that allows these same analyses to be carried literally for pennies per sample. He then used the technique to analyze DBP concentrations in thousands [of] experiments, generating a data base in roughly a year that is, without exaggeration, comparable to that generated by all the researchers studying this topic throughout the country for the past two to three decades. . . .

[The petitioner] is one of literally a handful who have mastered the theoretical fundamentals, the experimental challenges, and the engineering processes that can be brought to bear on the problem [of DBP formation]. I believe that his dissertation will propel him to the forefront of the field of DBP control. . . .

[H]is departure would slow the research drastically and would be a setback to us and to the progress we are making toward solving the DBP problem.

(Emphasis in original.) Professor [redacted] of [redacted] Quaternary Research Center states that the petitioner "has advanced our understanding [of] how to predict the potential of various waters for the formation of DBPs and, therefore, how to minimize [their] formation."

Dr. [redacted] of [redacted] and [redacted] was a post-doctoral research associate at [redacted] when he met the petitioner in 1990. Dr. [redacted] states that the petitioner's "dissertation work has shown potential to improve fundamental understanding in several key areas of our field." Dr. [redacted] Research Associate at [redacted] states that the petitioner's "work has been on the cutting edge of science and technology. . . . [H]e is likely to be a key contributor to any project [in which] he will be engaged."

Dr. [redacted] of the [redacted] has collaborated with the petitioner, Prof [redacted] and Dr. [redacted] Dr. [redacted] states "I have been impressed with [the petitioner's] interest and competence in performing difficult chemical fractionations and separations regarding purification of natural organic matter from inorganic salt constituents."

The director requested additional evidence to establish that the petitioner plays a vital, irreplaceable role in research of national importance. The director instructed the petitioner to submit testimony from "recognized national experts."

In response, the petitioner has submitted three additional letters. Professor [redacted] supplements his earlier letter with the assertion that he himself is a "national expert," having served on

the board of directors or national committees of several major organizations in his field and won several prizes.

Professor [redacted] Chair of [redacted] Department of Civil Engineering, lists a series of accomplishments to establish his own national expertise. Prof. [redacted] states that the petitioner's "work has been very productive and is a very promising area for continued research. . . . I heard his presentations and thought they were very effective and well received."

Dr. [redacted], Vice President and National Director of Water Research at [redacted] states that his company is "a civil engineering consulting firm . . . rated 8th largest in the water business class by the Engineering News Record." Dr. [redacted] states:

> I am familiar with [the petitioner's] work, both through his publications, as well as work he has conducted on [redacted] sponsored research projects. . . . [H]is most significant work is related to organics characterization and the enumeration of pathways by which chlorinated . . . [redacted] are formed in water treatment processes. I cannot overstate the importance of this work. . . . Implementation of mandated monitoring and mitigation protocols will cost this country an estimated 15 billion dollars over the next ten years. [The petitioner's] work is important because it will help impacted utilities to optimize treatment processes to achieve the new mandates at the lowest possible cost.

The director denied the petition, stating that the petitioner is "a member of a team" who has not established that his contribution is more important than those of others in the field. The director emphasized that the overall importance of an alien's field of endeavor is not sufficient to qualify that alien for a national interest waiver.

On appeal, counsel contests the director's findings, stating that the initial evidence was sufficient to demonstrate the petitioner's eligibility for the benefit sought. The petitioner submits a third letter from Professor [redacted], who states:

> [The petitioner] is part of a 'team of researchers' to the extent that any doctoral student is, per force, a member of a team comprising himself and his advisor(s). . . . [T]he student is responsible for making the original contribution that leads to the granting of the degree. . . . [The petitioner] is primarily responsible for the original research described in [his] publications; in no way was he simply a member of a broad team doing the research. . . .

> [U]nlike a 'traditional' doctorate, [the petitioner's] research did not just advance the state-of-the-art of an existing field; it changed the direction of the field permanently. This impact has been conveyed to me by several of my colleagues at other universities, all of whom are beginning to apply the approach that [the petitioner] developed.

The record offers no corroboration for Prof. Benjamin's assertions regarding the petitioner's impact on the field. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, regardless of Prof. Benjamin's standing in his field, case law constrains the weight which this office can give to his unsupported assertions. Prof. Benjamin has not identified specific institutions where the petitioner's ideas have been implemented, and the petitioner has not submitted letters from professors at those other institutions. The record does not definitively establish that the petitioner has had an impact beyond [redacted] Even some witnesses associated with [redacted] couch their endorsements largely in terms of the petitioner's potential for future achievements, rather than the petitioner's existing impact on the field. If the petitioner has, in fact, had a significant and permanent impact on the field at large, then evidence to support that assertion should be available from sources other than the petitioner's supervisors and collaborators.

Such impact can be demonstrated by several means, such as letters from acknowledged experts with no direct connection to the petitioner, evidence of heavy citation of the petitioner's publications, and so on. Because such evidence, if it exists, would be readily available to the petitioner, this office cannot rely solely on the assertions of a witness who freely admits his vested interest in the approval of this petition (Prof. Benjamin has stated that denial of the petition would jeopardize his grant funding).

The importance of the petitioner's field of research is indisputable, but the evidence submitted in this matter is not of a caliber which would support the assertions made in support of the petition. Witnesses have tacitly equated denial of the national interest waiver with the petitioner's expulsion from the United States, without explaining why the normal labor certification procedure would not be suitable for this alien (who has a job offer from a U.S. employer).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant

national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.